

BOIES SCHILLER FLEXNER LLP

Daria Pustilnik (FBN 09514) (admitted *pro hac vice*)

dpustilnik@bsfllp.com

Rossana Baeza (FBN 1007668) (admitted *pro hac vice*)

rbaeza@bsfllp.com

Leigh Salomon (FBN 1054106) (admitted *pro hac vice*)

lsalomon@bsfllp.com

100 SE 2nd Street, Suite 2800

Miami, FL 33130

Telephone: (305) 539-8400

Sean P. Rodriguez (SBN 262437)

srodriguez@bsfllp.com

Andrew J. Rambo (SBN 339503)

arambo@bsfllp.com

44 Montgomery Street, 41st Floor

San Francisco, CA 94104

Telephone: (415) 293-6800

Counsel for Plaintiff Tangle, Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

TANGLE, INC.,

Plaintiff,

v.

BOXGEAR INTERNATIONAL, LLC,

Defendant.

Case No. 3:23-cv-04573-JSC

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR SANCTIONS**

Judge: Hon. Jacqueline Scott Corley

Courtroom 8, 19th Floor

Date: November, 17, 2024

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NOTICE OF MOTION

To all parties and their attorneys of record: Please take notice that, pursuant to the permission granted by the Court's Order Re: Discovery Motions and Case Schedule, dated September 30, 2024 (Dkt. 60), and the Court's Order Re: Stipulated Request for Order Changing Time as to Order Re: Discovery Motions and Case Schedule, dated October 17, 2024 (Dkt. 62), on November 17, 2024, or as soon thereafter as the matter may be heard, Plaintiff, Tangle, Inc. ("Plaintiff" or "Tangle"), by undersigned counsel, respectfully moves this Court to issue sanctions against Defendant, Boxgear International, LLC ("Defendant").

RELIEF SOUGHT

Pursuant to Rule 37 of the Federal Rules of Civil Procedure, Rules 7 and 37 of the Civil Local Rules of the Northern District of California, and in advance of the Court's Order extending the deadline for Plaintiff to file a motion to compel and any other fact-discovery related motion, including requests for sanctions, to November 17, 2024 (Dkt. 62), Plaintiff respectfully seeks an Order (1) compelling Defendant to reimburse Plaintiff's reasonable attorneys' fees incurred due to Defendant's repeated and unjustified failures to comply with its discovery obligations and the Court's Order Compelling Defendant to Produce Documents ("Discovery Order"), dated August 8, 2024 (Dkt. 47), (2) imposing coercive sanctions on Defendant in the amount of one thousand dollars (\$1,000) for each day that Defendant continues to be in violation of its discovery obligations and the Discovery Order, and (3) entering a default judgment against Defendant, as the Court has already threatened to do because repeated instructions from the Court and requests from Plaintiff have failed to motivate compliance. In support, Plaintiff respectfully refers the Court to the following Memorandum of Points and Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES**I. STATEMENT OF ISSUES TO BE DECIDED**

Under Federal Rule of Civil Procedure 37 and Northern District of California law, whether Defendant's repeated failure to comply with its discovery obligations and the Discovery Order warrants the imposition of sanctions, including but not limited to (1) an award of reasonable

1 attorneys' fees and costs incurred by Plaintiff, (2) coercive sanctions, such as a daily monetary sum
2 until Defendant and Defendant's counsel comply, (3) and entry of a default judgment due to
3 Defendant's willfulness, fault, or bad faith.

4 **II. STATEMENT OF RELEVANT FACTS**

5 **A. Initial Investigation and Inadequate Responses**

6
7 As early as September 5, 2023, one day prior to Plaintiff filing its Complaint, Defendant was
8 providing conflicting information, as when Defendant claimed its Infringing Product was listed on
9 Amazon but never sold despite Amazon customer reviews, which date back to July 10, 2022, and
10 continue thereafter to the present, depicting the Infringing Product through text referencing the word
11 "Tangle" and images and videos showing a product that looks identical to Plaintiff's. Declaration
12 of Leigh Salomon filed concurrently herewith ("Salomon Decl."), ¶ 3. Defendant would contradict
13 these reviews again by claiming at a Case Management Conference on August 8, 2024, that
14 Defendant did not sell the Infringing Product on Amazon prior to August 2022. *Id.*, ¶ 4. On January
15 3, 2024, meanwhile, Plaintiff served its First Request for Production on Defendant, seeking
16 documents essential to resolve the case. *Id.*, ¶ 5. Defendant's initial Responses, submitted on March
17 27, 2024, rather than February 2, 2024, as required, were grossly inadequate and overdue. *Id.*, ¶ 6.
18 Defendant produced only three documents: two pictures of products and one incomplete report from
19 Defendant's Amazon store. The production was untimely and deficient, excluding necessary
20 communications and financial documents Plaintiff requested. *Id.*, ¶ 7.

21 **B. Good Faith Efforts to Resolve Discovery Deficiencies**

22 On May 2, 2024, Plaintiff identified and communicated to Defendant the shortcomings in
23 its production, requesting Defendant supplement its Responses in an effort to resolve the insufficient
24 production without court intervention. Plaintiff made repeated attempts to engage Defendant in
25 good faith discussions to secure the complete production of the requested documents. Despite these
26 efforts, Defendant remained uncooperative. Salomon Decl., ¶ 8. Consequently, on June 20, 2024,
27 the Court ordered Defendant to supplement its production. *Id.*, ¶ 9. However, on July 1, 2024,
28 Defendant merely produced the same three documents previously submitted, followed on July 5,

1 2024, by another incomplete report from Defendant's Amazon store and two samples of its products.
2 *Id.*, ¶ 10.

3 **C. Continued Non-Compliance and Further Court Intervention**

4 Failing again to address the deficiencies Plaintiff identified, or comply with the Court's
5 instructions to supplement its production, Plaintiff believed it had no choice but to seek further
6 involvement from the Court. Salomon Decl., ¶ 10. As such, on July 18, 2024, the Court warned
7 that Defendant was risking a default for non-compliance with its discovery obligations. *Id.*, ¶ 11.
8 However, Defendant continued its pattern of non-compliance, providing incomplete reports from its
9 Walmart and Amazon stores on July 18 and July 26, 2024, respectively, but nothing from other sales
10 channels Plaintiff identified nor any indication of profits. *Id.*, ¶ 12. The Court therefore told
11 Defendant at a Case Management Conference on August 8, 2024, to search its electronic records,
12 or hire a vendor to do so, and issued the Discovery Order on the same day requiring Defendant to
13 produce all sales reports from all vendors and all communications regarding Plaintiff or the
14 Infringing Product by August 22, 2024. *Id.*, ¶ 13.

15 **D. Waste of Party and Court Resources**

16
17 Once more, Defendant's Responses were severely lacking, producing eight manufacturer
18 invoices on August 15, 2024, and yet another sparse report from its Amazon store on August 20,
19 2024. Both were supposed to be provided by February 2, 2024, because they were responsive to
20 Plaintiff's First Request for Production. Salomon Decl., ¶ 14. These deficiencies hindered the
21 parties' ability to mediate productively on August 12, 2024, a setback not helped when Defendant
22 missed the original deadline to submit its required Mediation Statement. *Id.*, ¶ 15. Defendant also
23 continued to define the Infringing Product differently than paragraph 2 of Plaintiff's Complaint in
24 correspondence, which Plaintiff explained was not acceptable. *Id.*, ¶ 16. Then, on August 22, 2024,
25 the deadline to comply with the Discovery Order, Defendant admitted responsive documents, such
26 as communications over Skype transmitting invoices from its manufacturer, existed, but failed to
27 produce them. *Id.*, ¶ 17. On August 23, 2024, Defendant refused to conduct the electronic searches
28 the Court demanded or respond to Plaintiff's outstanding discovery requests. *Id.*, ¶ 18.

1 Subsequently, on September 11, 2024, Defendant responded to Plaintiff's remaining requests,
2 repeating the same objections previously provided, claiming compliance, and producing nothing
3 new. *Id.*, ¶ 19.

4 **E. Deposition Admissions Substantiate Discovery Violations**

5 During Plaintiff's Deposition of Defendant on September 18, 2024 ("Plaintiff's
6 Deposition"), Plaintiff learned Responsive communications and documents existed that should have
7 (but were not) produced. Salomon Decl., ¶ 20. Defendant admitted that Amazon has sent Defendant
8 emails regarding orders and identifying numbers ("ASINs") associated with the Infringing Products,
9 that Amazon provided records called "order details" showing profits for said products, that
10 Defendant sometimes received product invoices from a manufacturer through Skype and Alibaba,
11 and that Alibaba and Amazon sent shipment confirmations through email or on the platforms
12 themselves. *Id.*, ¶ 21. None of these documents were produced during Plaintiff's Deposition.
13 Defendant merely provided one new manufacturer invoice. *Id.*, ¶ 22. Defendant further admitted
14 that it did not conduct the searches it was Ordered by this Court to perform and later asserted to not
15 remembering if searches were conducted. Defendant even admitted to deleting emails from its
16 Gmail inbox on a weekly or monthly basis, and as recently as September, and was "not really" aware
17 of its obligation to suspend the deletion of relevant information, pursuant to Federal Rule of Civil
18 Procedure 37(e). *Id.*, ¶ 23.

19 **F. Renewed Efforts to Comply Fall Short**

20 Defendant finally attempted compliance with its discovery obligations only after Plaintiff
21 secured Defendant's testimony in Plaintiff's Deposition and requested sanctions again while
22 relaying said testimony in a Joint Case Management Statement filed on September 25, 2024.
23 Salomon Decl., ¶ 24. The Court permitted Plaintiff to file a motion for sanctions, among other relief,
24 on September 30, 2024. *Id.*, ¶ 25. Meanwhile, Defendant's newly retained co-counsel contacted
25 Plaintiff on September 26, 2024, to address the longstanding discovery issues and first tried to
26 provide the required discovery on October 8, 2024. But the electronic file containing most of the
27 data was too large for Plaintiff to properly view even after consulting with its Information
28

1 Technology (“IT”) professionals, who noted the webpage displaying the emails quickly ceased to
2 function after loading only a fraction of them. *Id.*, ¶ 26. To allow Defendant more time, Plaintiff
3 stipulated in good faith on October 17, 2024, to extend the deadline to file a motion for sanctions to
4 November 17, 2024. However, Defendant’s second attempt, on November 6, 2024, was also
5 inadequate. This time, Plaintiff’s IT professionals noted the electronic information could not even
6 be accessed and suggested files were either missing or corrupted. *Id.*, ¶ 27. Though Defendant
7 pledged a third attempt on November 8, 2024, Plaintiff has yet to receive it and, with the deadline
8 to request sanctions now here, grows concerned by the costs already incurred to enforce compliance,
9 now incurred troubleshooting with Defendant, and to be incurred processing the discovery late (if
10 ever received in an accessible format) and with less time than if Defendant complied when supposed
11 to on February 2, 2024, over nine months ago. *Id.*, ¶ 28.

12 III. LEGAL STANDARD

13 Rule 37 of the Federal Rules of Civil Procedure governs the enforcement of discovery orders
14 and imposition of sanctions for non-compliance, giving the Court broad discretion to order the
15 payment of reasonable expenses, including attorney’s fees, incurred as a result of a party’s failure
16 to obey a discovery order, render a default judgment against the disobedient party, or issue further
17 just orders, unless the movant filed the motion before attempting in good faith to obtain discovery,
18 the opposing party’s non-compliance was substantially justified, or other circumstances make an
19 award of expenses unjust. Fed. R. Civ. P. 37(a)(5) and (b); *Lee v. Walters*, 172 F.R.D. 421, 435 (D.
20 Or. 1997) (awarding fees).

21 Case law from the Northern District of California similarly gives the Court broad discretion
22 under Rule 37 of the Federal Rules of Civil Procedure to impose sanctions against a party for failure
23 to comply with discovery orders. *Hosea v. Donley*, No. CV 11-02892 EJD, 2012 WL 5943092, at
24 *2 (N.D. Cal. Nov. 27, 2012). This may even include violations of a court’s oral order if a party
25 unequivocally has notice of the court’s request and payment from the disobedient party, its counsel,
26 or both of the movant’s reasonable expenses, including attorney’s fees, caused by the discovery
27 failure as stated in Rule 37(b)(2)(C). *Garcia v. Bana*, No. C 11-02047 LB, 2012 WL 2119157, at
28

1 *5 (N.D. Cal. Jun. 9, 2012). Such non-dispositive decisions, which include sanctions designed to
 2 compel compliance with a discovery order, do not require a finding of contempt either, but instead
 3 receive “a degree of deference under Fed. R. Civ. P. 72(a), so long as they are not clearly erroneous
 4 or contrary to law.” See *Williams v. Condensed Curriculum Int’l*, No. 20-cv-05292-YGR (RMI),
 5 2021 WL 6621071, at *3 (N.D. Cal. Dec. 29, 2021) (citation omitted).

6 For more drastic sanctions such as entry of a default judgment, the court in *Hosea* urges that
 7 the party’s non-compliance should be “due to willfulness, fault, or bad faith.” 2012 WL 5943092,
 8 at *2 (quotation omitted). The court in *Garcia* echoes this sentiment with regard to terminating
 9 sanctions, elaborating a five-part test the Ninth Circuit has constructed to determine whether a case-
 10 dispositive sanction under Rule 37(b)(2) is just: “(1) the public’s interest in expeditious resolution
 11 of litigation; (2) the court’s need to manage its dockets; (3) the risk of prejudice to the party seeking
 12 sanctions; (4) the public policy favoring disposition of cases on their merits; and (5) the availability
 13 of less drastic sanctions.” 2012 WL 2119157, at *7 (quotation omitted). In addition, the fifth factor
 14 has three sub-parts, which include, “whether the court has considered lesser sanctions, whether it
 15 tried them, and whether it warned the recalcitrant party about the possibility of case-dispositive
 16 sanctions.” *Id.* (citation omitted).

17 Civil Local Rules 7-8 and 37-4 of the Northern District of California outline the form and
 18 procedure for a Motion for Sanctions under Federal Rule of Civil Procedure 37, requiring, among
 19 other specifications, the movant to explain the facts and circumstances supporting the motion, the
 20 efforts made to secure compliance without the Court’s intervention, and, if attorney’s fees or other
 21 costs or expenses are sought, an itemization of these expenses with particularity to show how they
 22 are directly caused by the alleged violation or breach and appropriate justification for any attorney-
 23 fee hourly rate claimed. Civil L.R. 7-8 and 37-4.

24 **IV. ARGUMENT**

25 **A. Defendant’s Pattern of Non-Compliance Warrants Sanctions**

26
 27 Defendant’s persistent failure to comply with its discovery obligations despite repeated
 28 warnings and the Discovery Order demonstrates a clear pattern of willful non-compliance that

1 warrants the imposition of sanctions under Rule 37 of the Federal Rules of Civil Procedure. As
2 explained in *Hosea, Garcia, and Williams*, the Court has broad discretion to issue non-dispositive
3 sanctions, including attorney’s fees, when a party’s disobedience toward discovery requests or
4 orders lacks substantial justification and causes unnecessary delays and increased costs to the
5 opposing party. 2012 WL 5943092, at *2; 2012 WL 2119157, at *5; 2021 WL 6621071, at *3.

6 Defendant’s actions in the present case mirror the obstructive behaviors in *Williams*, where
7 the defendant resorted to “frivolous objections, rhetorical games, [and] non-responsive answers” to
8 create the impression of substantial compliance when, in actuality, the defendant was providing
9 piecemeal discovery responses and disregarding basic term definitions to, in the court’s view, evade
10 and escape its discovery obligations. 2021 WL 6621071, at *1–2. Here, Defendant similarly
11 impeded the discovery process by providing the same or fragmented responses and then claiming
12 compliance and by contradicting established terminology, as with the term “Infringing Product”, to
13 suit Defendant’s narrow definition of Plaintiff’s product.

14 The party resisting discovery has the burden to clarify through explanation and support of
15 its objections why discovery should not proceed. *Williams*, 2021 WL 6621071, at *2 (quoting
16 *DIRECTV, Inc. v. Trone*, 209 F.R.D. 455, 458 (C.D. Cal. 2002)). Yet, in many of the Joint Case
17 Management Statements that Defendant submitted, it barely backed up its position and ignored some
18 of Plaintiff’s arguments altogether, making limited admissions each time a new piece of discovery
19 was put forward. For the most part, Defendant simply reiterated platitudes about how it does not
20 have the communications and documents requested, despite Plaintiff providing evidence to the
21 contrary through identification of other sales channels that sold the Infringing Product and
22 reproduction of Defendant’s own admission over email and in Plaintiff’s Deposition that Defendant
23 possessed communications and invoices responsive to Plaintiff’s First Request for Production.

24 For these reasons, Plaintiff believes, at the very least, an award of attorney’s fees is
25 warranted to reimburse Plaintiff for Defendant’s continued failure to satisfy its discovery obligations
26 and comply with the Court’s Orders. As employed by the court in *Williams*, Plaintiff also feels that
27 to compel compliance the imposition of coercive sanctions via a daily monetary sum in the amount
28 of \$1,000 per day is warranted upon Defendant until all Parties have jointly filed written certification

1 agreeing that Defendant has fully and properly, not just substantially, met its discovery obligations
2 and the Court's Orders. 2021 WL 6621071, at *3. This District has found \$1,000 per day to be
3 appropriate as a coercive sanction. *Id.* (granting a \$1,000 daily fine without the need for a finding
4 of contempt due to the defendant's deficient production).

5 **B. Defendant's Conduct Justifies Entry of a Default Judgment.**

6 Defendant's efforts to avoid its discovery obligations in the face of continued good faith
7 attempts from the Plaintiff and instructions from the Court reflects a deliberate endeavor to obstruct
8 the discovery process that justifies entry of a default judgment under Rule 37 of the Federal Rules
9 of Civil Procedure. Courts in this district have held that such severe sanctions may be imposed
10 when willfulness, fault, or bad faith causes a party's non-compliance. *Hosea*, 2012 WL 5943092,
11 at *2; *Garcia*, 2012 WL 2119157, at *7.

12 Defendant's conduct in the present case illustrates a level of awareness and egregiousness
13 beyond mere oversight or negligence. For example, in an email to Plaintiff's counsel on September
14 5, 2023, Defendant claimed the Infringing Product was never sold on its Amazon store, only listed.
15 Defendant's counsel, meanwhile, represented at a Case Management Conference on August 8, 2024,
16 that Defendant did not sell the Infringing Product on its Amazon store prior to August 2022.
17 However, Defendant's customer reviews, which date back to July 10, 2022, and continue after
18 Plaintiff filed its Complaint on September 6, 2023, contradict the statements of Defendant. Many
19 of these reviews clearly show the Infringing Product before Defendant altered it, as evidenced by
20 reviewer text that references the word "Tangle" and reviewer images and videos that show a product
21 identical to Plaintiff's. These misrepresentations or lies, coupled with Defendant's blatant disregard
22 of the Discovery Order to conduct a basic search of its email records until well passed the deadline
23 to do so and Defendant's admission in Plaintiff's Deposition to possessing communications all along
24 via Amazon, Alibaba, and Skype that are responsive to Plaintiff's discovery requests, establishes a
25 lengthy history of Defendant's willfulness, fault, and bad faith, for which non-dispositive sanctions
26 alone may not be enough to prevent from continuing.

1 The court in *Garcia* elaborated on terminating sanctions, expounding that such dispositive
2 sanctions should consider the public's interest in a swift resolution, the court's need to manage its
3 docket, the risk of prejudice to the party seeking sanctions, the public policy that favors disposition
4 of cases on their merits, and the availability of less drastic sanctions, the final factor also including
5 whether court considered, tried, and warned the non-compliant party about the possibility of the
6 sanctions. 2012 WL 2119157, at *7.

7 This Ninth Circuit test further supports the entry of a default judgment on Defendant because
8 Defendant's conduct has delayed the resolution of this case and burdened the Court's docket by
9 necessitating extensions of discovery deadlines and additional Case Management Conferences,
10 respectively. Defendant's conduct has prejudiced Plaintiff, meanwhile, by preventing Plaintiff from
11 obtaining the discovery needed to litigate its claims effectively. While public policy favors
12 resolving cases on their merits, Defendant's willful non-compliance and bad faith has made this
13 impossible. Finally, although the Court has not yet imposed lesser sanctions, it has already
14 considered and warned Defendant once with the possibility of entering a default judgment, yet
15 Defendant's non-compliance has persisted. Therefore, the imposition of dispositive sanctions, such
16 as entry of a default judgment, is properly justified as non-dispositive sanctions, such as an award
17 of attorney's fees, are unlikely compel Defendant's compliance.

18 **V. REQUEST FOR RELIEF**

19 For the reasons stated above, Plaintiff respectfully requests that the Court grant the following
20 relief:

21 **A. Attorney's Fees**

22 Plaintiff requests an award of reasonable attorney's fees incurred as a direct result of
23 Defendant's repeated failure to comply with its discovery obligations and the Court's Order. In
24 accordance with Civil Local Rule 37-4(3) of the Northern District of California, these expenses are
25 itemized with particularity to detail the hours worked, hourly rates applied, and specific tasks
26 undertaken that were made necessary by Defendant's non-compliance. *See* Plaintiff's Invoices and
27 Timekeeping Entries, attached hereto as **Exhibit 12**. As Defendant's non-compliance with its
28

1 discovery obligations began with its failure to respond to Plaintiff's First Request for Production by
2 February 2, 2024, pursuant Federal Rule of Civil Procedure 34(b)(2)(A), documents and
3 communications responsive to which have still not been provided in an accessible format, Plaintiff
4 is only requesting attorney's fees for the work performed since that date because such work would
5 not have been necessary had Defendant properly responded when it was supposed to. These costs
6 are in line with the prevailing market rates for attorneys of similar experience and expertise in the
7 Northern District of California.

8 The total amount sought is one hundred sixty-one thousand forty-five dollars and ninety-one
9 cents (\$161,045.91).¹ As **Exhibit 12** details, this includes, but is not limited to, work related to the
10 following tasks: (1) communications with parties and the Court; (2) preparations for hearings with
11 the Court; (3) preparation and delivery of subpoenas to third parties, which were more detailed than
12 necessary due to Defendant's deficient production; (4) drafting additional discovery requests that
13 may not have been necessary, such as Interrogatories, Requests for Admissions, and a Second
14 Request for Production; (5) drafting this Motion for Sanctions and its accompanying documents; (6)
15 preparing for and deposing Defendant, which was lengthier than necessary due to Defendant's
16 deficient production; and (7) troubleshooting Defendant's repeated inability to provide requested
17 discovery in an accessible format, including drafting a stipulation and associated documents to allow
18 Defendant more time to produce what should have been provided many months earlier.

19 **B. Coercive Sanctions**

20 Plaintiff requests that the Court impose coercive sanctions on Defendant, including a daily
21 monetary fine in the amount of one thousand dollars (\$1,000.00), or a sum the Court deems
22 reasonable, until Defendant fully and properly complies with its discovery obligations and the
23 Court's Orders. These sanctions are necessary to compel compliance, as good faith efforts to
24 communicate requests and warnings have proven ineffective to ensure Defendant's cooperation.
25

26
27
28 ¹ Some invoices containing relevant time entries have not yet been finalized. Plaintiff reserves the right to supplement Exhibit 12.

1 **C. Default Judgment**

2 Plaintiff requests that the Court enter a default judgment against Defendant. Defendant's
3 willful non-compliance and bad faith conduct in spite of repeated discovery requests and the
4 Discovery Order have undermined the judicial process and prejudiced Plaintiff's ability to seek an
5 efficient resolution to this case, making entry of a default judgment an appropriate remedy under
6 Rule 37 of the Federal Rules of Civil Procedure and local case law from the Northern District of
7 California.

8 **D. Additional Relief**

9 Plaintiff further requests any additional relief that the Court deems just and proper, including
10 but not limited to the extension of discovery deadlines for Plaintiff by 60 days from Defendant's
11 complete production and additional orders compelling specific actions by Defendant to facilitate
12 carrying out the discovery process.

13 **VI. CONCLUSION**

14 For the foregoing reasons, Plaintiff respectfully requests that the Court grant this Motion for
15 Sanctions, including an award of attorney's fees, imposition of coercive sanctions, and entry of a
16 default judgment against Defendant. Plaintiff believes that such measures are necessary to protect
17 its rights, ensure compliance with the Discovery Order, and preserve the integrity of the judicial
18 process.
19

20
21 Dated: November 17, 2024

Respectfully submitted,

22 **BOIES SCHILLER FLEXNER LLP**

23 **By:**

24 _____
25 /s/ Leigh Salomon

26 _____
 Leigh Salomon
 Attorney for Plaintiff

27 **BOIES SCHILLER FLEXNER LLP**
28 Sean P. Rodriguez (SBN 262437)
 srodriguez@bsflp.com

Andrew J. Rambo (SBN 339503)
arambo@bsflp.com
44 Montgomery Street, 41st Floor San
Francisco, CA 94104
Telephone: (415) 293-6800
Facsimile: (415) 293-6899

Rossana Baeza (FBN 1007668) (admitted *pro*
hac vice)

rbaeza@bsflp.com

Daria Pustilnik (FBN 09514) (admitted *pro*
hac vice)

dpustilnik@bsflp.com

Leigh Salomon (FBN 1054106) (admitted *pro*
hac vice)

lsalomon@bsflp.com

100 SE 2nd Street, Suite 2800
Miami, FL 33130
Telephone: (305) 539-8400

Attorneys for Plaintiff Tangle Inc.

CERTIFICATE OF SERVICE

On November 17, 2024, I served the foregoing Motion for Sanctions on counsels for the Defendant, Yakup Sari, via email to yakup@sarilaw.us, and J. Curtis Edmondson, via email to jcedmondson@edmolaw.com. I electronically filed the foregoing Motion for Sanctions with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses denoted on the Electronic Mail Notice List. I declare under penalty of perjury under the laws of the United States that the Certificate of Service is true and correct.

Leigh Salomon

Attorney for Plaintiff